IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

WP(C).No. 33761 of 2007(T)

OS.27/2007 OF MUNSIFF COURT, HOSDRUG.
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PETITIONERS:
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1. **DEVARAJ BANGARU,**
   BISHOP/CHAIRMAN, KARNATAKA SOUTHERN DIOCESE
   EDUCATION SOCIETY, BALMATTA, MANGALORE.

2. **KARNATAKA SOUTHERN DIOCESE EDUCATION**
   SOCIETY, REPRESENTED BY ITS SECRETARY,
   MR. SHASHIPAL SHETTIAN, BALMATTA, MANGALORE-575002.

BY ADV. SRI.SUBHASH CYRIAC,
ADV. SMT.M.C.SHIJIMOL.

RESPONDENT:

DR. SANJEEV N.LAZAR,
'PASSOVER', KOVVALPALLY, KANHANGAD VILLAGE,
HOSDURG TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/11/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.33761 OF 2007

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Dated this the 15th day of November 2007

JUDGMENT

This writ petition is preferred against the order of the Munsiff's Court, Hosdurg in O.S.No.27 of 2007. Issue No.6 was raised regarding the jurisdiction of the court to try the case. The court, after hearing all the parties concerned, came to the conclusion that the question of territorial jurisdiction in the case is a mixed question of law and fact and without evidence, jurisdiction questioned cannot be decided and therefore the court below relegated issue No.6 along with other issues. Learned counsel for the petitioners would submit that the court should have tried it as a preliminary issue and therefore the decision is illegal.

2. I had gone through the plaint especially the paragraph regarding cause of action alleged. It is stated therein that "the 2nd defendant and his men trespassed into the plaint schedule school and disrupted the office hours illegally at Hosdurg, Hosdurg Village of Hosdurg Taluk within the jurisdiction of this Hon'ble Court". So, there is a pleading regarding the attempted act of trespass. Similarly, there is dispute regarding the question

where the meeting was held and where the decisions were taken. So, the question of jurisdiction, so far as this case is concerned, is rather intertwined or interlinked with the facts which require adjudication, which will be relevant for the purpose of determining the question of jurisdiction. After the amendment of the C.P.C., the word 'shall' has been substituted by the word 'may' and the intention behind such amendment was to reduce the tire of litigation of each stage and the Parliament contemplated a complete trial of the entire matter at one stretch so that litigations need not be protracted indefinitely. But, at the same time, it is made clear that when the question involved is only a question of law, which will decide the fate of the case, certainly the court can exercise the jurisdiction and hear it as a preliminary issue. As far as this case is concerned, as discussed by me earlier, and as found by the court below in order to resolve the question of jurisdiction also the facts have to be analysed and evidence has to be appreciated.

Therefore, I find that the court below was perfectly justified in relegating the issue of jurisdiction also along with other issues. But, I make it clear that on such analysis if the court finds that the said court has no jurisdiction it is always advisable that the court does not enter into the merits of the other aspects because a court without jurisdiction is not

expected to go into the other details.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-